

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



FELIPPE MARCUS,

Plaintiff,

v.

20-CV-00316 (JLS)

CITY OF BUFFALO, et al.,

Defendants.

DECISION AND ORDER¹

On May 7, 2021, the Court entered a Decision and Order which, *inter alia*, dismissed without prejudice *pro se* Plaintiff Felipe Marcus's state common law claims asserted in his amended complaint (Dkt. 15 ¶¶ 16, 19), because he had failed to timely file a notice of claim against the City of Buffalo and the other City Defendants under N.Y. Gen. Mun. L. § 50-e. Dkt. 17, at 14-15. Marcus was provided thirty days to show cause why these claims should not be dismissed for his failure to file a timely notice of claim against the City of Buffalo. *Id.* at 15.

On May 28 and June 8, 2021, Marcus moved for reconsideration of that portion of the Court's Decision and Order dismissing his state law claims

¹ Familiarity with the procedural background of this matter is presumed. For a complete summary, the parties are referred to the Court's latest Decision and Order, entered May 7, 2021 (Dkt. 17).

against Defendants. Dkts. 18, 22.² Marcus attached copies of a Notice of Claim that his former attorney had filed against the City of Buffalo, Buffalo Police Department, Interim Commissioner Bryan C. Lockwood of the Buffalo Police Department, and John Does 1-10, individual officers of the City of Buffalo and/or Buffalo Police Department, on or about June 1, 2018. Dkt. 22, at 4-20. Marcus's motion states that he had "just received" his file from his former attorney who had "dismissed [his] case just weeks prior to [the] filing expiration date." *Id.* at 1. The letter from Marcus's former counsel enclosing the file is dated May 25, 2021. *Id.* at 2.

Accordingly, the Court finds that Marcus has demonstrated cause why the state common law claims against Defendants should not be dismissed with prejudice and that his motion for reconsideration should be granted.

² Marcus also has submitted a letter to the Court asking for advice on what he can do regarding obtaining a response from the City of Buffalo Police Department to a subpoena duces tecum requesting copies of videotape footage of the incident at issue on or about March 30, 2018. Dkt. 23. Rule 45 of the Federal Rules of Civil Procedure addresses what steps he may take seeking compliance with the subpoena duces tecum. Marcus also is referred to the Court's Pro Se Assistance Program that he can call and obtain legal advice and guidance on a limited scope basis. The telephone number is (716) 847-0662, ext. 340.

ORDER

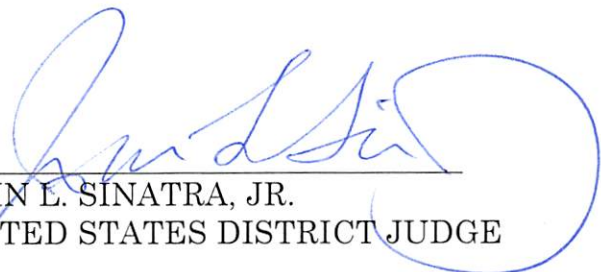
Based on the foregoing, it is hereby

ORDERED that the motion for reconsideration is GRANTED and the state common law claims asserted in the amended complaint are reinstated; and it is further

ORDERED that Defendants shall file an amended answer or other response to the amended complaint no later than 14 days after entry of this Decision and Order.³

SO ORDERED.

Dated: June 16, 2021
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

³ By reinstating these claims, the Court offers no opinion on their merits or whether Marcus complied with N.Y. Gen. Mun. L. §50-e and its procedural requirements.